IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2975 OF 2005

Intezar Umar Daraj Khan
Age about 34 years,
Residing at Haji Kasam Chawl
No.21,Room No.26, Kazi Pada
2 Tank, Mumbai
at present detained at Thane
Central Prison, Thane. ...Petitioner

Vs.

1. The Commissioner of Police,
Greater mumbai,
Mumbai.

2. The State of Maharashtra

3. The Superintendent,
Thane Central Prison,
Thane.

4. The Superintendent,
Nashik Road Central Prison,
Nashik. ...Respondents

Mr.Nitin Sejpal and Ms.Pooja Bhojne for the Petitioner
Mr.D.S.Mhaispurkar, A.P.P. for the Respondents.

CORAM :- B.H.MARLAPALLE &
NARESH H.PATIL,JJ.

DATE : 7TH OCTOBER, 2006

ORAL JUDGMENT (PER : B.H.MARLAPALLE,J.)

1. This Petition filed under Article 226 read with Article 21 and 22 of the Constitution of India challenges the order of detention dated 31st October,2005 passed under section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug Offenders and Dangerous Persons Act,1981 (for short "MPDA Act") passed by the

Commissioner of Police, Mumbai. The said order was served on detenu on 2nd November,2005 when he was already under arrest in connection with C.R.No.67 of 2005 registered with the V.P.Road, Police Station at Mumbai and the detention period would therefore expired on 1st November,2006.

2. Though various grounds have been taken in the Petition to challenge the said order, the following two grounds have been emphasized before us :-

a) The Petitioner came to be arrested in connection with C.R.No.67 of 2005 on 19th September,2005 and the bail application submitted by him before the learned Sessions Judge (Court No.18), came to be withdrawn on 24th October,2005. The impugned order is passed within one week from the withdrawal of the said application and therefore, it was not justified either on the basis of law or on the facts and circumstances. More particularly, when the Petitioner was claimed to be a dangerous person and within the meaning of Section 2(b)(1) of the MPDA Act.

b) Apart from C.R.No.67 of 2005, two in-camera statements recorded on 4th October,2005 and 3rd October,2005. The first in-camera statement disclosed the alleged offence that had taken place in second week of May,2005 and 2nd in-camera statement, the alleged offence is disclosed to have taken place in the 3rd week of May,2005 and the detention order is passed on 31st October,2005. There is no potentiality or propensity between these alleged acts in May,2005 and the date of detention order i.e. 31st October,2005.

3. Coming to the first ground, it is clear from the reasons recorded in the affidavit enclosed with the impugned order that the Respondent No.1 was aware about the fact that the detenu had withdrawn the bail

application submitted before the Sessions Court. It is further stated in the grounds for detention as under :-

> "I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order. I am aware that you have not been granted bail in V.P.Road Police Cell, Lodhoy Colony, New Delhi, F.I.R.No.86 of 2005 but you have not availed of the bail facility in this case. You are in judicial custody in both cases. However, you may be granted bail in V.P.Road Police Station C.R.No.67 of 2005 under the normal law of land in due course. In view of your tendencies and inclinations reflected in the offences committed by you as stated above, I am further satisfied that after availing the bail facility and being at large, being a criminal, you are likely to revert to the similar criminal activities prejudicial to the maintenance of public order in future and that it is necessary to detain you under the MPDA Act to prevent you from acting in such a prejudicial manner in future."

4. In the affidavit-in-reply filed by the State Respondent No.1 there is further averment in this respect stating that

> "on the basis of the material placed before me I was satisfied that the detenu was likely to be released on bail and in view of his tendencies and inclination he would revert back to his prejudicial activities in future. I state that although the allegations in C.R.No.67 of 2005 were of serious nature, considering the fact that the said offence was not compulsorily punishable with death or imprisonment for life and considering the role of the detenu that he was standing to facilitate the escape of his associates and there was no recovery from any of the accused and also of the fact that the investigation of the C.R.No.67 of 2005 and charge sheet was filed. I was satisfied that the detenu may be released on bail under normal law. I state that I am aware that normally court use to grant bail considering the individual role of

the accused and also after prolonged period of custody. Also many times the Court used to grant bail on humanitarian ground on account of illness of detenu or his family. I state that considering this cogent material, I was satisfied that although the detenu has withdrawn his application for bail before the Sessions Court, in future he would get bail and based on his part activities, I was also satisfied that the detenu would revert back to the similar prejudicial activities in future. In view of this, after recording my subjective satisfaction in para 6 of the Ground of Detention, I had issued the Detention order. Hence, contents of this para are denied."

5. In the case of **Dharmendra Suganchand Chelawat and another Vs. Union of India and Others, AIR 1990 SC 1196**, the circumstances regarding the satisfaction of the Detaining Authority for passing a detention order against the person under arrest already have been setout in the following words :-

"The decision referred to above lead to the conclusion that the order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that

i) the Detaining Authority was aware of the fact that the detenu is already in detention and

ii) here were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

6. In the case of **Kamarunnissa Vs. Union of India and Another, 1991 (1) SCC 128**, the Hon'ble Supreme Court stated in paragraph No.13 as under :-

> "From the catena of decisions referred to above it seems clear to us that even in case of person in custody detention order can be validly passed if,
>
> 1) if the authority passing the order is aware of the fact that he is actually in custody;
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> 2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and
>
> 3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher Court."

7. More recently, in the case of **T.V.Sravanan alias S.A.R.Prasana Venkatachaariar Chaturvedi Vs. State Through Secretary and Another, 2006(1) SCC (Cri) 593** a similar case was considered and after referring to the earlier decisions as cited above as well as the decisions in the case of **Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, AIR 1964 SC 334**, **Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, 1986 (4) SCC 416** and **Rajesh Gulati Vs. Government of NCT of Delhi, AIR 2002 SC 3094** the Hon'ble Supreme Court upheld the contention that the

order of detention could not have been passed, unless the imminent possibility of the detenu being released on bail in the criminal case was satisfied. Mere ipse dixit of the Detaining Authority supported by any material by whatsoever cannot be accepted to support such detention order.

8. A Division Bench of this Court in the case of **Amit Rakesh Janbandhu Vs. State of Maharashtra 2002(3) Mh.L.J. 90** also quashed the detention order in similar circumstances. Whereas Mr.Mhaispurkar, the learned A.P.P. referred to the decision in Criminal Writ Petition No.2314 of 2004 (decided on 21st February,2005) to oppose the contentions on issue No.1. It is well settled that in each case, the facts and circumstances have to be independently examined and it cannot be said that merely because the detenu was already under arrest he could not have been subjected to an order of preventive detention. The Detaining Authority in addition to being aware that bail was not granted must also record satisfaction that there was an eminent possibility of detenu being released on bail and if so released, he would in all priority indulge in prejudicial activities. In the case of Kamarunissa (Supra) the Apex Court held that the Detaining Authority must be satisfied that there was real possibility that the detenu was being released on bail. We are therefore, required to

examine the instant case on these parameters and we have noted from the grounds of detention that as per the Detaining Authority the detenu himself had played a major role in the offence registered in C.R.No.67 of 2005 punishable under section 395,397 read with Section 34 of the Indian Penal Code and Sections 3,4,25 and 27 of the Arms Act. In fact as per the detaining authority, the detenu was the master mind in the broad daylight robbery of diamonds worth Rs.5/- Crores.

9. In fact the grounds of detention make out a case that the detenu was a Master Mind on his behalf on the said day-night robbery involving diamonds worth Rs.5/- Crores. The reasoning set out in the grounds for detention as well as in the affidavit placed before us are nothing but mere ipse dixit to say that the detenu was likely to be released on bail. We are not satisfied with the said reasoning given by the Respondent No.1. It is also clear from the reasons for detention that the investigation has been completed and charge sheet was filed. We are informed by the learned Counsel for the detenu that after the bail application was withdrawn no second bail application was presented by following the decision of the Apex Court in the case of T.V.Shravanan (Supra) and the view taken in the case of **Prakash Pujari** (Criminal Writ Petition No.2253 of 2005 decided on 27th June,2006) we are inclined to accept and allow

the challenge to the detention on the first ground and therefore, we need not examine the second ground raised to challenge the said order.

10. Hence, the Petition succeeds and the same is hereby allowed. The impugned order of detention dated 31st October,2005 is hereby quashed and set aside.

(NARESH H.PATIL,J.) **(B.H.MARLAPALLE,J.)**